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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

JOSEPH J. DELFINO, M.D.

Petitioner,

VS.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

JOSEPH J. DELFINO, M.D.
593 Broad Street
Providence, Rhode Island
Petitioner, Without Attorney,
Under Protest

OXFORD PRESS, INC., PROVIDENCE, R. I.

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vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

To the Honorable, The Chief Justice and Associate Justices of The Supreme Court of the United States:

The Petitioner comes before this Court as an American citizen who, *only* because he is also of a Class known as Veterans of the Armed Forces, continues summarily stripped by the Respondents themselves, under color of law, of the constitutional and inalienable rights to unabridged freedom of speech with counsel, of complete freedom of association with counsel, of liberty of contract with counsel.

In that the awesome power of the Respondents can effectuate the imprisonment for 2 years at hard labor of any of 25 million citizens who are veterans *only* for engaging in

the *free* exercise of their absolute rights to unabridged freedom of speech, association, and peaceable assembly to pursue other rights to even petition for redress, this Petitioner is hereby forced himself, and alone, to prepare this case to the Court begging its understanding and utmost liberty on any non-mastered technical points.

The Petitioner prays that a writ of certiorari issue to review the judgments and order of the District Court of the United States for the District of Rhode Island entered in the above entitled case on October 3, 1966 and October 17, 1966 respectively, granting the motion of the Respondents to dismiss the pleadings of the Petitioner for the right to be represented by counsel without threats by the Respondents and, secondly, to dismiss as showing no controversy, the pleadings — oral and written — to engage counsel to answer Respondents' motion as being unconstitutional; further, to similarly review the Order of the United States Court of Appeals for the First Circuit of December 7, 1966, when on right to appeal, this Petitioner still deprived of counsel without threats motioned the Appeals Court for Appointment of *Full* Counsel, under the Court's protection and without threats by the Respondents, in order to be represented by counsel in the Appeals Court.

(a) OPINIONS BELOW

The orders of the District Court of the United States for the District of Rhode Island were entered on October 3, 1966 and October 17, 1966. No opinion, for or against a citizen's written and oral pleadings for representation by counsel before that Court and continued thereon to preparation of Appeal to the Appeals Court was rendered. There was only silence in the Court and in the Decision on these pleadings for the right to an unthreatened lawyer. Thus silence cannot be placed in the Appendix.

The Orders of the United States Court of Appeals for the First Circuit were unencumbered by oral pleadings and thus are as printed in the Appendix.

(b) JURISDICTION

A.) Under Part V, Rule 19, and Rule 20 of the Rules of the Supreme Court of the United States, Adopted April 12, 1954 as Amended through June 1964, particularly under 1.(b) of Rule 19.

B.) The First Amendment of the Constitution which Amended *all* Articles of the Constitution (and certainly including Article III, all Sections) in that the citizen thus received and had had augmented the *unabridged* right to petition for redress of grievances *the* Government. Since *the* Government under the Constitution has *Three* Branches, we citizens, even though veterans, have secured the *unabridged* right, by ratification, to petition *the entire* Government, including the Judiciary under Article III, for redress of grievances, be they civil or legal, as they remain *our* grievances and Congress *Shall* make *No* law abridging these rights.

(c) QUESTIONS PRESENTED

1. May the District Court of the United States tolerate and ignore by its muteness overt written threats against

a) The petitioner before it in due process b) his desired but thus restrained counsel even though these threats of overt imprisonment of each are under color of law and complete control of the Respondents themselves?

2. May the District Court of the United States deprive, under any guise, a petitioner-citizen of his unabridged right to freedom of speech without being subject to criminal restraints in pursuit of equal protection of the laws only because the petitioner is a Veteran also?

3. May the District Court of the United States arbitrarily condone, even with knowledge of color of law, overt discrimination between petitioning citizens constitutional rights to due process and equal protection of the laws in that those who did not wish attorneys before the Court were admonished to have them; those who wilfully trifled with the Court were placed on continuance of protection of a reluctant attorney; the meanwhile this petitioner both in petition proper and oral begging for right of full speech and full representation with counsel was ignored ——— in the *same* Court, on the *same* Calendar, the *same* Session.

4. May the District Court of the United States so misunderstand a cogent written pleading and oral pleading demanding basic constitutional treatments in order for a non-lawyer citizen to even answer a motion to Dismiss that it departs beyond the facts and conjures circumstances as pleasing to it for ease of decision —

a) Its failure to face distasteful facts in that the Court could not affirm but that the Petitioner and not an attorney, was petitioning the court directly and in its direct vision.

5. May the District Court of the United States (a) without due process and when the petition encompasses the question, continue by muteness and by silence in its decision the illegal seizure of the property rights of the petitioning citizen who wishes to exercise them freely to pursue his other constitutional rights (b) illegally seize, without due process, in concert, the property rights and freedom of contract of an attorney — a member of a small group in our State to whom these rights are reserved by law and otherwise unobtainable to any others before the courts and at bar.

6. May the District Court of the United States be, as it says, bound by the statutes of the United States first and by the Constitution and its Amendments only *secondly* in

that it used the Declaratory Act whilst it ignored due process and equal protection guarantees to where any Act could even enter.

7. Can the Court become a party to entrapment in that requesting answer to a Motion to Dismiss required full rights of unabridged freedom of speech, freedom of association, and liberty of contract with an attorney — conditions stayed of fulfillment by threats of imprisonment before, during, and after the fact.

8. May the Court under a Declaratory Act of Congress *dismiss* a purely Constitutional rights petition of a citizen in that the predication of "dismissal" can never lead to a *redress,* either affirmed or denied.

9. May the Court, whilst the citizen deprived unconstitutionally of the rights to hire *full* counsel in a lower Court, is on Appeal, itself continue deprivation of counsel either (a) to be freely hired, without threats, to prepare the Appeal and (b) offer no remedy to secure necessary counsel even under its right to appoint full counsel without sanctions.

(d) APPLICABLE CONSTITUTIONAL PROVISIONS

They are set forth in the Appendix and are the First, Fourth, Fifth, Ninth, and Tenth Amendments of the Constitution against Title 38, Section 3401 through 3405.

(e) STATEMENT OF THE CASE

A concise statement of the case contains the main facts material to consideration of the questions and is:

The Petitioner, under threats, has been denied due process and equal protection of the law before and during all court actions in pursuit of his petition for his other constitutional rights.

The present Appeal, in pursuit of so-called right to Appeal, before the U. S. Circuit Court is no Appeal without Constitutional safeguards.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT

Directly and Concisely:

A. The First Amendment has been outlawed for citizens, who are also veterans, in that the lower courts have, in effect, upheld the lack of its constitutional safeguards in its procedural matters.

B. The First Amendment specifically and by mandate of absolute prohibition orders the Congress to "make *NO* Law" which abridges freedom of speech of citizens, freedom of association, or abridges the right of citizens to petition the Government for redress of grievances.

It was absolutely prohibitive (a) to make *any* law which allows an Administrator to specifically restrain the unabridged right to petition.

(b) to allow an Administrator to decree imprisonment at hard labor to 25 million citizens of this class known as veterans just for the free exercise of the unabridged right to speech even unto their Courts.

(c) to abrogate to an Administrator of the Executive Branch powers of imprisonment per se without recourse of due process to the Judiciary Branch in that prior restraints are actually and potently tangible, through potent sanctions, making the deeds of freedoms become the commission of a crime.

(d) Congress Shall Make *NO* Law abridging the freedom of speech by *fixing* the *price* of the speech allowable to that of $10.00 in value. There can be no price fixed for a priceless possession and for a *right!*

(e) Congress Shall Make *NO Law* portioning out, to any degree, unabridged rights of speech to criminals or to communists whilst forbidding freedom of speech discriminatorily to the physical preservers of these unabridged rights, a class known as Veterans of the Armed Forces.

C. The Administrator of Veterans and the Attorney-General of the U. S., his attorney, have embarked on a statutory absurdity in that their own law, under the word "whomever" would have each imprison the other for directly or indirectly soliciting and in the preparation of their grievance their Motion to Dismiss.

D. Prior Decisions of the Supreme Court:

a) In *Monk v. City of Birmingham,* D. C. Ala. 87 F. Supp., 538 affirmed 185 F. 2d 859, certiorari denied 71 S. Ct., 1001, 341 U. S. 940, 95 L. Ed. 1367 the Court had more than adequate authority in that *"mere existence* of the zoning provision deprived such owners of the free use of their property and their right to sell it for Negro occupancy, and hence an actual and presently justiciable controversy existed for declaratory judgment to determine constitutionality of the ordinances."

b) *Baldwin v. Morgan,* C. A. Ala. 1958, 251 F. 2d 780 clearly held "The fact that the law or *Constitution* clearly *forbids* compulsory segregation in facilities of interstate as well as intrastate commerce did not render a declaratory judgment action by Negro interstate passengers, complaining of segregation, nonjusticiable."

Our Constitution does clearly forbid any class of citizens being segregated from constitutional rights enjoyed equally by all and in *Jackson v. Rawdon,* C. A. Tex. 1956; 235 F. 2d 93 certiorari denied 77 S. Ct. 221; 352 U. S. 925 those complaining and seeking a declaration were held as follows:

"Minor Negro plaintiffs who sought declaration of their

rights to attend unsegregated schools had an *absolute* right to have their constitutional rights declared."

C. Other Supreme Court decisions found the presence of sanctions repugnant to the Constitution and not only struck them down but pounded them into our heritage. In *Teuney v. Brandhove,* 341 U. S. 367-384, 1951; In *Barsky v. United States,* 167 F. 2d 241, 1941 certiorari denied 334 U. S. 843, 1948—

The charge:

"..... is that a legislative committee brought the weight of its authority down on respondent for exercising his right of free speech. Reprisal for speaking is as much an *abridgment as a prior restraint.* If a committee of the House departs so far from its domain to deprive a citizen of a right protected by the Constitution, I can think of no reason why it should be immune."

D. January 14, 1963, the Supreme Court of the United States gave its decision in *National Association for the Advancement of Colored People v. Atty.-General Button* (Va.), 371 U. S. 415, 83 S. Ct. 328.

This Decision affirmed the rights of *all* citizens, since those of white race most assuredly are included, to not only "see" an attorney but for them to join together, without sanctions even of such a minor charge as barraty contrasted to 2 years at hard labor and thus *freely* to pursue other Constitutional rights.

The Court in crystal-clear English tinkling with clarity of intent stated, in part;

"..... These freedoms are delicate and vulnerable, as well as supremely precious in our society. The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions. For a state (and I contend also the Government) *may not,* under the *guise* of prohibiting professional misconduct *ignore* constitutional rights."

The Supreme Court did *not* state that colored citizens (and thereby white citizens) who are veterans were segregated from its decision. Would colored veterans not be even now able to approach freely attorneys, without sanctions, under force of this clear Decision?

CONCLUSION

The while the citizens of our country read, through exercise of the freedom of the press, that *even* criminals have full rights to attorneys before all Courts, the Courts below declare by muteness and indirectness that a law-abiding citizen, *because he is a veteran,* must stand alone and fettered in the free exercise of his rights to an attorney. In some manner, and in his quest for no area of speech before his Courts to be summarily forbidden to him in concert with others, he has by fact become disenfranchised.

I state once again and even to this August Court that I am an American citizen and that my rights and obligations flow from my birth and are extinguishable *only* by my death.

I have no unthreatened counsel; I am not a lawyer and yet, rather than to have any of my speech with another citizen who is a lawyer metered by despoilers of rights, I stand forced to appear here without counsel.

The Respondents had reason to allow breaches of rights in that they would thus end up right, in Court, with a wrong.

The Petitioner has reason to pray that his and your Constitution ultimately will strike down such awesome, dictatorial powers forbidden by our Founders.

Respectfully submitted,

JOSEPH J. DELFINO, M.D.

Petitioner, Without Attorney,
Under Protest

APPENDIX A

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND

JOSEPH J. DELFINO
vs.
UNITED STATES OF AMERICA, *et al*, VETERANS' ADMINISTRATION } CIVIL ACTION NO. 3642

ORDER

This matter came on for hearing on **OCTOBER 3, 1966** on defendants' Motion to Dismiss and after hearing thereon it was ordered, adjudged and decreed that the Motion to Dismiss be, an the same was, granted, and the plaintiff was given two weeks to file an Amended Complaint.

It hereby appearing that the plaintiff did not file an Amended Complaint within the two-week period, it is hereby

ORDERED, ADJUDGED and DECREED

That the Complaint be, and the same is hereby dismissed.

By Order,

s/Neale D. Murphy

Clerk

Enter:
s/Edward W. Day
Chief Judge
United States District Court
SEPTEMBER 21, 1966

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND

JOSEPH J. DELFINO, M.D.
vs.
UNITED STATES OF AMERICA, *et al.*
} CIVIL ACTION No. 3674

ORDER

This matter came on for hearing on October 17, 1966, on the defendants' Motion to Dismiss and, after hearing thereon, and consideration thereof, it is hereby

ORDERED, ADJUDGED and DECREED

That the said Motion to Dismiss be, and the same is hereby, granted.

By Order,

s/Neale D. Murphy
Clerk

Enter:
s/Edward W. Day
Chief Judge
United States District Court

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 6825. JOSEPH J. DELFINO, M. D.,
Plaintiff, Appellant,

v.

UNITED STATES OF AMERICA ET AL.,
Defendants, Appellees.

ORDER OF COURT.

December 7, 1966.

Upon consideration of motion of appellant for enlargement of time,

It is ordered that the time within which appellant shall file four typewritten copies of his statement of points to be relied upon, with proof of service of one copy upon counsel for appellees, be, and the same hereby is, enlarged to and including January 10, 1967; and further

It is ordered that the fixing of a date for the filing of printed copies of brief for appellant and record appendix thereto be postponed until the Court has determined from examination of the record presented and of said statement of points whether sufficient merit is involved to warrant the prosecution of this appeal. See Rule 25(3) of the Rules of this Court.

By the Court:

/s/ ROGER A. STINCHFIELD
Clerk.

[cc. Mr. Delfino and Mr. Faerbar.]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 6825. JOSEPH J. DELFINO, M. D.,
Plaintiff, Appellant,

v.

UNITED STATES OF AMERICA ET AL.,
Defendants, Appellees.

ORDER OF COURT.

December 7, 1966.

It is ordered that the motion of appellant for appointment of counsel be, and the same hereby is, denied.

By the Court:

/s/ ROGER A. STINCHFIELD
Clerk.

[cc. Mr. Delfino and Mr. Faerbar.]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 6825. JOSEPH J. DELFINO, M. D.,
Plaintiff, Appellant,

v.

UNITED STATES OF AMERICA ET AL.,
Defendants, Appellees.

ORDER OF COURT.

January 5, 1967.

Upon motion of appellant,

It is ordered that further prosecution of the appeal herein be, and the same hereby is, stayed until further order of this Court, pending certiorari proceedings to review the order of this Court of December 7, 1966, denying appellant's motion for appointment of counsel.

By the Court:

/s/ ROGER A. STINCHFIELD
Clerk.

SUPREME COURT OF THE UNITED STATES

No. ....., October Term, 1966

JOSEPH J. DELFINO,

Petitioner,

vs.

UNITED STATES

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of petitioner.

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above entitled cause be, and the same is hereby, extended to and including April 6, 1967.

/s/ WILLIAM J. BRENNAN, JR.

Associate Justice of the Supreme Court of the United States

Dated this 7th day of March, 1967

APPENDIX B

APPLICABLE CONSTITUTIONAL AND STATUTORY PROVISIONS

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue but upon probable cause supported by oath or affirmation, and particularly discribing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, other infamous crime unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment IX

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the State, are reserved to the states respectively, or to the people.

Title 38. Section 3401 thru Section 3405.

3401. Prohibition against acting as claims agent or attorney.

No individual may act as an agent or attorney in the preparation, presentation, or prosecution of any claim under laws administrated by the Veterans' Administration unless he has been recognized for such purposes by the Administrator.

34.02 Recognition of Representatives of Organizations.

(a) 1. The administrator may recognize representatives of the American National Red Cross, the American Legion, the Disabled American Veterans, the United Spanish War Veterans, the Veterans of Foreign Wars and such other organizations as he may approve in the preparation, presentation, and prosecution of claims under laws administered by the Veterans' Administration.

2. The administrator may in his discretion, furnish, if available, space and office facilities for the use of paid full-time representatives of national organizations so recognized.

(b) *No* individual shall be recognized under section - -

1. Unless he has certified to the Administrator that no fee or compensation of any nature will be charged any individual for services rendered in connection with any claim; and

2. Unless, with respect to each claim, such individual has filed with the Adminstrator a power of attorney, executed in such manner and form as the Administrator may prescribe.

(c) Service rendered in connection with any such claim while not on active duty, by any retired officer, warrant officer, or enlisted man of the Armed Forces recognized under this section shall not be a violation of section 281 or 283 of Title 18, or in violation of section 99 of Title 5.

3403. Recognition with respect to particular claims.

The Administrator may recognize any individual for the preparation, presentation, and prosecution of any particular claim for benefits under any of the laws of the Veterans' Administration if - - -

1. Such individual has certified to the Administrator that no fee or compensation of any nature will be charged any individual for services rendered in connection with such claim, and
2. Such individual has filed with the Administrator a power of attorney, executed in such manner and such form as the Administrator may prescribe.

3404. Recognition of agents and attorneys generally.

(a) The Administrator may recognize any individual as an agent or attorney for the preparation, presentation, and prosecution of claims under laws administered by the Veterans' Administration. The Administrator may require that individuals, before being recognized under this section, show that they are of good moral character and in good repute, are qualified to render claimants valuable service, and otherwise are competent to assist claimants in presenting claims.

(b) The Administrator, after notice and opportunity for a hearing may suspend or exclude from further practice before the Veterans' Administration any agent or attorney recognized under this section if he finds that such agent or attorney - -

1. has engaged in any unlawful, unprofessional or dishonest practice,
2. has been guilty of disreputable conduct,
3. is incompetent,
4. has violated or refused to comply with any of of the laws administered by the Veterans' Administration, or with any of the regulations or instruments governing practice before the Veterans' Administration; or
5. has in any manner deceived, misled, or threatened any actual or prospective claimant.

(c) The Administrator shall determine and pay any fees to agents or attorneys recognized under this section in *allowed* claims for monetary benefits under laws administered by the Veterans' Administration, such fees - -

(1) Shall be determined and paid as prescribed by the Administrator;

(2) Shall not exceed $10. with respect to any one claim; and

(3) Shall be deducted from monetary benefits claimed and allowed.

3405. Penalty for certain acts.

Whoever

(1) directly or indirectly solicits, contracts for, charges for, or receives or attempts to solicit, contract for, charge or receive, any fee or compensation except as provided in sections 3404 or 784 of this title, **or**

(2) wrongfully withholds from any claimant or beneficiary any part of a benefit or claim allowed or due him, **shall** be fined not more than $500 **or imprisoned at hard labor for not more than two years, or both.**

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND

W. WILLARD WIRTZ, *Secretary of Labor, United States Department of Labor,*
v.
NADEAU FOUNDATION and
ELPHEGE NADEAU
} C.A. No. 3265

Before his Honor, Judge Day

Monday, October 17, 1966

APPEARANCES:

For the Plaintiff: Paul J. McTague, Esq.
For the Defendant: Pro se.

HEARING upon Order for Examination of Defendant-Debtor.

(Opening statement by counsel for the plaintiff)

The COURT. Mr. McTague, you have a right, as you know, under the controlling law, which is the law of the State of Rhode Island, to resort to supplemental proceedings if you wish. We follow the state practice in that regard. If you wish to examine Mr. Nadeau as to his means, you may do so.

Are you prepared to pay this judgment or do you want to be examined as to your ability to pay?

The DEFENDANT. Your Honor, I mentioned long ago that I was not ready because my counsel is not available yet. That is the reason why.

The COURT. Who is your counsel?

The DEFENDANT. It is an old story. There is a company in New York I am working with —

The COURT. Where is your counsel this morning?

The DEFENDANT. He is not available.

The COURT. Then you can take the stand. You may examine Mr. Nadeau, if you wish, Mr. McTague. This Court isn't going to be trifled with, Mr. Nadeau.

The DEFENDANT. I am sorry, your Honor.

(Examination of Elphege Nadeau)

I hereby certify that the foregoing 2 pages are a true and accurate transcript accoording to my stenographic notes.

EUNICE J. ARCHAMBAULT
Official court reporter.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF RHODE ISLAND

INDUSTRIAL NATIONAL BANK
v.
JOSEPH BORGES, JR., *et al* } C.A. No. 3571

Before his Honor, Judge Day

Monday, October 17, 1966

APPEARANCES:

For the Plaintiff: Hinckley, Allen, Salisbury & Parsons.
Thomas D. Gidley, Esq. of counsel.

For the Defendants:

Joseph Borges, Sr.; Raymond A. Thomas, Esq.
Rego & Sons Construction Co.: Albert A. Nutini, Esq.

HEARING in re Motion of Raymond A. Thomas, Esq. to withdraw as Attorney.

Mr. THOMAS. May it please the Court, I have filed a motion for leave to withdraw as attorney for Joseph Borges, Sr. Previous to my filing this motion I did write to Mr. Borges on August the 20th; and since then he came into my office and I again told him I wanted to withdraw. On October the 7th I sent him a registered letter, together with a copy of my motion for leave to withdraw. He has received it. I received from him a receipt for the registered letter.

The COURT. What has he indicated he intends to do about getting other counsel? **We cannot proceed with the case with a party who is not represented by counsel.**

Mr. THOMAS. He called me Thursday night from Florida with the intent for me to remain on the case. I told him I couldn't.

The COURT. This Court is not disposed to permit counsel to withdraw and leave a client unrepresented. It creates needless difficulty for the Clerk.

Mr. THOMAS. I have been trying to withdraw since August.

The COURT. Is he a native Rhode Islander?

Mr. THOMAS. He is a Rhode Islander, your Honor. He alternates between Florida and Coventry, Rhode Island.

The COURT. The Court is concerned with the practical problem that this creates. You have been counsel for Joseph Borges, Sr. since the inception of this action, have you not?

Mr. THOMAS. Yes, your Honor. I believe the attorney for the Industrial National Bank also has had experience with him. He has been to talk to Mr. Pendergast in his office also. **I don't feel under the circumstances I could do the man justice as his attorney.**

The COURT. I don't mean to pry into the relationship between attorney and client. All I am concerned with is having someone here representing Borges, Sr. if he has an interest in this matter.

Mr. THOMAS. I believe he has an interest, your Honor, and a substantial one.

The COURT. It would seem to the Court common sense would dictate you and he straighten out your affairs and let him get new counsel if he wants new counsel. I don't want to proceed with this matter in his absence.

(Colloquy between the Court and counsel)

The COURT. I am going to continue this motion of yours, Mr. Thomas, and I think that you ought to exert further efforts to get Mr. Borges to get new counsel. Impress upon him, if you will, **the utter necessity of his being represented**

here with respect to the ownership of the proceeds. Tell him the Court insists that someone be selected by him to succeed you, if you are to withdraw. I will continue this motion two weeks and see if something can be done. I don't like to leave the Court in the position of not having counsel representing anyone before this Court.

I hereby certify that the foregoing 4 pages are a true and accurate transcript according to my stenographic notes.

EUNICE J. ARCHAMBAULT
Official court reporter.

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 1220

JOSEPH J. DELFINO, M.D., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner brought this suit to contest the constitutionality of 38 U.S.C. 3401–3405. These provisions govern the recognition of agents and attorneys for the preparation, presentation and prosecution of claims for benefits under laws administered by the Veterans' Administration, and limit the fees payable to such agents and attorneys to $10 with respect to any one claim. Petitioner argues that the provisions—which were designed to protect veterans from unreasonable exactions—abridge his freedom of speech and association and liberty of contract because they preclude him and other veterans from hiring counsel who charge more than the statutory amount. The district court dismissed petitioner's complaint on

261-880—67

October 3, 1966, for failure to present a case or controversy. The district court's order allowed petitioner two weeks to file an amended complaint, but he did not do so (Pet. 10).

In a separate pleading, petitioner renewed his contentions and further complained that the government's motion to dismiss his complaint had been designed to deprive him of his First Amendment right to petition for redress of grievances. This pleading also was dismissed (Pet. 11), and on November 17, 1966, petitioner filed a notice of appeal.[1] On December 7, 1966, the court of appeals denied petitioner's motion for appointment of counsel (Pet. 13), and by order of January 5, 1967 (Pet. 14), it stayed further proceedings on appeal pending the present certiorari proceedings, wherein petitioner seeks review of the dismissal of his complaint by the district court and of the court of appeals' denial of his motion for appointment of counsel.

It is evident from petitioner's pleadings that he has not alleged any actual controversy between himself and the United States. It does not appear from his papers how the provisions of 38 U.S.C. 3401 *et seq.* injure him, or that they at present do, or in the foreseeable future will, abridge his right to consult with an attorney of his choosing. Accordingly, this action for a declaratory judgment may not be maintained. *Public Service Comm'n of Utah* v. *Wycoff Co.*, 344 U.S. 237; *Maryland Casualty Co.* v. *Pacific Coal & Oil Co.*, 312 U.S. 270.

[1] Apparently, petitioner did not appeal from the order dismissing his complaint.

In addition, petitioner's constitutional arguments are without merit. The statutory provisions complained of represent a proper exercise of the congressional power to establish the terms on which governmental benefits are conferred and to protect veterans claiming such benefits against overreaching by agents and attorneys. See *Hines* v. *Lowrey,* 305 U.S. 85, 90–91.; *Margolin* v. *United States,* 269 U.S. 93; cf. *Moss* v. *United States,* 311 F. 2d 462 (C.A. 2), petition for certiorari dismissed pursuant to Rule 60, 374 U.S. 819.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

MAY 1967.

U.S. GOVERNMENT PRINTING OFFICE: 1967